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The Supreme Court of the United States

October Term 1936

No. [redacted] 8

DAVID H. RYAN,

Appellant,

vs.

THE STATE OF WASHINGTON, et al.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

Motion of Mason-Walsh-Atkinson-Kier Company for leave to file Brief as Amicus Curiae, and Brief of Amicus Curiae

W. G. GRAVES,
ARNOLD L. GRAVES,
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GRAVES, KIZER & GRAVES,
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EMPIRE PRINTING CO., SPOKANE

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THE STATE OF WASHINGTON, et al.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

MAY IT PLEASE THE COURT:

The undersigned, as counsel for Mason-Walsh-Atkinson-Kier Company respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

There has been filed in this cause a stipulation by counsel for the respective parties that the accompanying brief may be so filed.

W. G. GRAVES,
ARNOLD L. GRAVES,
Counsel for Mason-Walsh-Atkinson-Kier Company as Amicus Curiae.

GRAVES, KIZER & GRAVES,
Of Counsel.

STATEMENT

The appellants in Silas Mason Company et al v. Tax Commission of the State of Washington et al, number 773 upon the docket of this court, assign error upon the question presented in this case. There, as here, it is urged that the cession by the State of Washington of jurisdiction to the United States precludes the levy by the State of its occupation tax in respect of an occupation carried on solely in ceded territory. As noted in the brief in that case the cession of jurisdiction to tax was pleaded as a ground of invalidity of the tax. The error of the trial court in this respect was assigned upon appeal to the Supreme Court of the State. By agreement of the parties and with the consent of the court, the question, common to both cases, of interference by the State with the United States was argued and presented in the Silas Mason case while the question, likewise common to both of the cases, of the effect of the cession of jurisdiction to the United States was presented in the Ryan cases. Since this procedure simplifies the presentation of the question in the cases, the appellants in the Silas Mason Company case adopt the argument to be made in this case as applying to their assignment of error based on the cession of jurisdiction. For this reason counsel for all the parties in both cases have stipulated that this brief may be filed in this cause to present the views of the appellants in the Silas Mason case.

The United States government is engaged in constructing the Grand Coulee Dam across the Columbia

River in the State of Washington. The appellants in the two Ryan cases and the appellants in the Silas Mason case are performing portions of the work under contracts with the United States. The details of the various contracts are set forth in Exhibit "A" in the two Ryan cases and in Exhibits "A" and "B" in the Silas Mason cases. An inspection of the contract and specifications will disclose that the United States prescribes in minute detail every step in the performance of the contract. The United States furnishes to the contractor the greater portion of the materials to be used, including the structural steel, the cement and even the sand and gravel. The contractors' function is the supply of labor. The dam is to be built according to the government's plans and specifications. It is to be built under the supervision of the officers of the government and is in its every detail subject to their inspection and approval. Purchases of every sort by the contractors are subject to the government's approval. The government specifies rules for the hiring of labor, who shall be hired and the wages that shall be paid them. It specifies the hours that men shall work. It specifies in detail the place where the contractors' camp shall be built, how the men shall be housed and how the buildings shall be constructed. It specifies concerning the water supply for the camp, for its fire protection, for its sewer and sanitation, for concessions and laws in the camp-site, what charges shall be made to the men, for schools, for police protection, and in short it regulates in every detail and every hour what the contractor shall do and how it shall do it.

Exhibit "C" in the Silas Mason case is a map showing the land at the site of the Grand Coulee Dam acquired by the United States government. Accompanying the map is a letter from the United States Engineer in charge of the construction explaining the map and stating the use to which the lands are put.

The record (R. 76, 104, 105) contains the stipulation that the United States government has acquired title to the lands shown on the map and that all of the work done by the appellants in all of these cases is done solely upon land, the title to which has been acquired by the United States Government. Title to the land in private ownership was acquired either by purchase or by condemnation. Jurisdiction over the land so acquired has been ceded to the United States by the State of Washington by statute.

> § 8108, Remington's Revised Statutes of Washington.

Congress has authorized the construction of the Grand Coulee Dam by the Rivers and Harbors Bill of the 74th Congress.

The Columbia is the second largest river in North America, exceeded in size only by the Mississippi. In its lower reaches it carries the ocean borne traffic of the world. The navigation of its upper reaches is rendered difficult in places by shoals and rapids. The river, however, throughout its length is navigable in fact as in law. At the point of construction of the Grand Coulee Dam the river has been stipulated to be navigable. (R. 105.)

The construction of the Grand Coulee Dam will create a quiet water pool extending from the middle of the State of Washington to the Canadian boundary, a distance of over 150 miles.

ARGUMENT

A. CESSION OF JURISDICTION TO UNITED STATES.

The cession of jurisdiction by the State of Washington with the sole reservation of concurrent jurisdiction for the service of civil and criminal process precludes the levy by the State of taxes upon persons or property within the territory ceded. It is as though this territory had ceased to be a part of the State of Washington. This is recognized in Concessions Company v. Morris, 109 Wash. 46. We quote the language of *the court at page 51:*

> "Under our law, Rem. Code, § 9101, only personal property *in* the state of Washington can be listed for taxation, and the question, therefore, must be answered by a determination of whether personal property situated upon this military reservation is *in* the state of Washington. It seems to us that the answer to this is clear, and that such property is *without* the state in both a jurisdictional and territorial sense, for, as we have seen by the constitution of the United States, and the act of the legislature of this state, both the military reservation itself and the jurisdiction and legislation over it have been granted to the United States, and thereby there has been created an independent sovereignty the territory of which is surrounded by the state of Washington, but over which the state of Washington has no jurisdic-

> tion. A territory has been created which resembles that of the District of Columbia, the only reservation being that the state of Washington can serve civil and criminal process therein on actions arising outside the reservation."

The cession of jurisdiction by Remington's Revised Statutes, § 8108, is as clear as anything can be. We set forth the pertinent language of the statute, eliminating unnecessary verbiage:

> "The consent of the state of Washington be and the same is hereby given to the acquisition * * * by the United States of America * * for the sites of locks, dams, piers, breakwaters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers * * of this state, * *; and the jurisdiction of this state is hereby ceded to the United States of America over all such land or lands as may have been or may be hereafter acquired * * for any or either of the purposes before mentioned * *."

No more definite, precise and exact cession of jurisdiction can well be imagined.

That the State of Washington, acting through its legislature, has power to make such a cession to the Federal government is likewise established by the same case. We quote from page 67:

> "As was decided in Fort Leavenworth R. v. Lowe, above, the legislatures of the various states have *power to cede* sovereignty to the Federal government of any territory within the state, * *."

As the statement above indicates the decision in Fort Leavenworth Railroad v. Lowe, 114 U. S. 525, is regarded as settling this question. We quote from pages 540 and 541:

"We are here met with the objection that the Legislature of a State has no power to cede away her jurisdiction and legislative power over any portion of her territory, * * *.

"In their relation to the general government, the States of the Union stand in a very different position from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. * * * Such cession is really as much for the benefit of the State as it is for the benefit of the United States. * * *."

When it is established that the Legislature of the State of Washington has power to cede jurisdiction over territory lying within the State of Washington to the United States government, and when it is established that it has ceded such jurisdiction the conclusion follows as a logical necessity that the State has parted with the power to tax persons or property within such territory. Concessions Company v. Morris, 109 Wash. 46, Fort Leavenworth Railroad Co. v. Lowe, 114 U. S. 525, Arlington Hotel Company v. Fant, 278 U. S. 439, Surplus Trading Company v. Cook, 281 U. S. 647, Standard Oil Co. v. California, 291 U. S. 242.

B. PURCHASE BY UNITED STATES WITH CONSENT OF STATE.

The intention of the Legislature to cede exclusive jurisdiction to the United States over all land ac-

quired by it for the purpose of such projects seems beyond question. If so, the case is disposed of. On the other hand, if the statute, notwithstanding its explicit language, be construed as not ceding jurisdiction, nevertheless exclusive jurisdiction has been acquired by the United States. A cession of jurisdiction by the State, of course, is one way in which the United States can acquire exclusive jurisdiction but it is not the only one. Another is purchase with the consent of the State.

By Article I, Section 8, Clause 17 of the Constitution of the United States, Congress is given power—

> "To exercise exclusive legislation in all cases whatsoever, over such district * * * and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

The effect of this clause of the Constitution has never been doubted. It is stated in Fort Leavenworth Railroad Co. v. Lowe, 114 U. S. 525, 532:

> "When the title is acquired by purchase by consent of the Legislatures of the States, the federal jurisdiction is exclusive of all State authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of Congress; and that no other authority can be exercised over them has been the uniform opin-

ion of Federal and State tribunals, and of the Attorneys General."

The requisites of exclusive jurisdiction in the United States then are:

1. Purchase of land by the United States.

2. Consent to such purchase by the State Legislature.

3. A purpose within the meaning of the clause.

As to the first requisite it was stipulated (R. 76, 88, 103) that title to all of the land upon which the work of the contractors was performed had been purchased by the United States.

Next, the consent to such purchase by the Legislature of Washington. Remington's Revised Statutes, § 8108:

> "The consent of the state of Washington be and the same is hereby given to the acquisition * * * by the United States of America * * * for the sites of locks, dams, piers, breakwaters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers * * * of this state, * * *."

Third, the purpose of the United States in undertaking the project. As stated in the Act of Congress the purpose is the improvement of navigation of the Columbia River by means of a dam and the subsidiary power plants and other structures. That such a project for such a purpose is within the constitutional power of Congress to authorize is established by Arizona v. California, 283 U. S. 423; Ashwander v. Tennessee Valley Authority, 297 U. S. 288; New York ex rel. Rogers v.

Graves, 81 Law Ed. Adv. Op. No. 5, p. 202, and many another case which it is unnecessary to cite. Likewise it is established by a long line of authorities, that such a project is within the meaning of clause 17 of the Constitution.

From the earliest times the courts have given to this clause of the Constitution a broad and liberal construction and have never narrowed its application by strict or inflexible rules. The courts have construed the language of clause 17 "and other needful buildings" as embracing all structures and places necessary for carrying on the governmental as distinguished from the proprietary business of the government.

In United States v. Tucker, 122 Fed. 518, the court expresses the thought as follows:

> "While there might possibly be some difficulty, if the question was res integra, as to the strictly proper construction and applicability to the case of locks and dams of the words 'for the erection of forts, magazines, arsenals, dock yards, and other needful buildings' used in the clause of the Constitution above quoted, the cases seem to leave no doubt that the broadest construction has been wisely put upon that language—one which makes it cover all structures and all places necessary for carrying on the business of the national government."

Many structures which by no possibility can be comprehended within the phrase "forts, magazines, arsenals, dock-yards" or can be considered as of like kind have been held to be within the language "and other needful buildings." Thus:

Post Offices and Federal Court Houses, State ex rel. Jones v. Mack (Nev.), 47 Pac. 763.

Soldiers Homes, People v. Mouse, (Cal.), 265 Pac. 944.

Indian Schools, United States v. Wurtzbarger, 276 Fed. 753.

Customs House, Sharon v. Hill, 24 Fed. 726.

Federal Penitentiary, Steele v. Halligan, 229 Fed. 1011.

Military Cemetery, Wills v. State, 50 Tenn. 141.

Locks and Dams, United States v. Tucker, 122 Fed. 518.

National Parks, Arlington Hotel Co. v. Fant, 278 U. S. 439.

The Arlington Hotel Company v. Fant case, supra, deals with the Hot Springs National Park. We call the court's attention to the fact that Congress has asserted the exclusive jurisdiction of the United States over Yellowstone National Park, U. S. C. A., Title 16, § 24, Act of May 7, 1894, Chapter 72, § 1, 28 Stat. 73; Sequoia, Yosemite and General Grant National Parks, U. S. C. A., Title 16, § 57, Act of June 2, 1920, Chapter 218, § 1, 41 Stat. 731; Mount Rainier National Park, U. S. C. A., Title 16, § 95, Act of June 30, 1916, Chapter 197, § 1, 39 Stat. 243; Crater Lake National Park, U. S. C. A., Title 16, § 124, Act of August 21, 1916, Chapter 368, § 1, 39 Stat. 521.

C. GRAND COULEE DAM PROJECT WITHIN CONSTITUTIONAL POWER OF CONGRESS.

Apparently the Supreme Court of Washington does not question either the rule that a cession of jurisdiction by the State vests exclusive jurisdiction in the United States or the rule that purchase of land with the consent of the State Legislature vests exclusive jurisdiction in the United States. The following excerpts appear to give the court's reasons for its decision (R. 46):

> "The point that we make and stress here, and upon which we rest our ultimate conclusion herein, is that, while the statute conferred consent upon the United States to acquire land within the territory of the state, the state's power to cede jurisdiction is limited, by the statute, to those instances where it clearly appears that the land is to be used by the United States for a constitutional or governmental purpose."

(R. 50):

> "The facts, taken as a whole, argue conclusively, in our opinion, that the state never intended to cede, and the United States never intended to take, exclusive jurisdiction over the project."

The basis of the court's opinion then is its conclusion that the Grand Coulee Dam project is beyond the scope of the governmental functions of the United States and in excess of its power under the Constitution because the purpose of the United States in undertaking the work is not *"a constitutional or governmental purpose."* This finding is not made from a consideration of the Act of Congress authorizing the

project—but from certain clauses in contracts relating to preliminary surveys and clauses in the specifications drawn up by engineers employed by the bureau of reclamation. In other words, the declaration by Congress "For the purpose of * * * improving navigation * * * the project known as * * * 'Grand Coulee Dam' on the Columbia River are hereby authorized and adopted, * * *" is not proof of the purpose of the United States, but a clause in a contract relating to a detail of the work inserted to insure compensation to injured workmen, is proof of the fact that the purpose of the project as a whole is beyond the scope of the Constitutional powers of the Federal government.

As a matter of logic this reasoning is faulty. Since Congress alone has power to authorize the Grand Coulee Dam project (United States v. Arizona, 295 U. S. 174) it follows that the purpose for which the project is authorized is the purpose of Congress. The Constitution gives to Congress the power to regulate commerce. Without an Act of Congress no officer of the United States, not even the President, has power to authorize the construction of a dam in navigable waters. United States v. Arizona, supra. It follows that whatever any official of the United States or the State of Washington may have said or done, or may have omitted to say or do, is irrelevant to the question of whether the United States has undertaken the project for "a constitutional or governmental purpose." An official may exceed his authority, may mistake the purpose of Congress, or may misconstrue the

Act of Congress, but his error cannot in logic control the court's decision upon the question whether a project undertaken pursuant to authorization by an Act of Congress is within the constitutional power of Congress to regulate commerce under the commerce clause of the Constitution.

The Act of Congress authorizing the Boulder Canyon Dam in the Colorado River declares the purpose of the project to be river regulation, improvement of navigation, flood control, irrigation, domestic use and power. In other words, the declaration of the purpose of Congress in that Act is identical with the declaration of Congress' purpose in the Act authorizing the Grand Coulee Dam project.

The Attorney General of Arizona urged this court in Arizona v. California, 283 U. S. 423, that the improvement of navigation, notwithstanding the terms of the Act, was not intended. We quote his argument as it appears at pages 444-445 of the official report:

> "Instead of being designed to improve navigation, the compact was drawn with the unmistakable intention of dedicating the river to uses inconsistent with navigation. That is not a mere speculation, but appears from the express language of the compact. * * *
>
> "The Act specifies, definitely and concretely, only two uses to which the project shall be put. One is the storage and sale of water. The other is the generation and sale of electrical power. Both uses would be hurtful rather than helpful to navigation, if there were any navigation to be hurt or helped.
>
> "It requires no argument to show that the navigation of a river, which has become non-nav-

igable from lack of water, cannot be improved by taking more water out of it. * * *"

In spite of the cogency of this argument this court upheld the Boulder Canyon Project Act as a valid exercise of the governmental and constitutional functions of the United States because of the declaration by Congress in the Act of its purpose to improve navigation. (pp. 455-456)

> "Into the motives which induced members of Congress to enact the Boulder Canyon Project Act, this Court may not enquire. (Citing cases.) The Act declares that the authority to construct the dam and reservoir is conferred, among other things, for the purpose of 'improving navigation and regulating the flow of the river.' As the river is navigable and the means which the Act provides are not unrelated to the control of navigation (citing cases), the erection and maintenance of such dam and reservoir are clearly within the powers conferred upon Congress. Whether the particular structures proposed are reasonably necessary is not for this Court to determine. (Citing many cases.) And the fact that purposes other than navigation will also be served could not invalidate the exercise of the authority conferred, even if those other purposes would not alone have justified an exercise of Congressional power. (Citing cases.)"

In Ashwander v. Valley Authority, 297 U. S. 288, the power of Congress to construct the Wilson Dam and Power Plant across the Tennessee River and to sell the electric energy generated was questioned. This court remarks (p. 329):

> "While, in its present condition, the Tennessee River is not adequately improved for commercial navigation, and traffic is small, we are not at lib-

> erty to conclude either that the river is not susceptible of development as an important waterway, or that Congress has not undertaken that development, or that the construction of the Wilson Dam was not an appropriate means to accomplish a legitimate end.
>
> "The Wilson Dam and its power plant must be taken to have been constructed in the exercise of the constitutional functions of the Federal Government."

In Arlington Hotel Company v. Fant, 278 U. S. 439, it appeared that a portion of the land was leased to a private hotel company. The attorneys for the plaintiff in error made a similar argument to this court. At page 441 of the report counsel say:

> "The site of the Arlington Hotel has never been devoted to or used for any governmental purpose of any character. It has always been used by the United States solely in its capacity of owner and landlord, for profit, and the United States cannot, in that capacity, acquire or accept jurisdiction of any character over it, * * *."

Answering this contention Mr. Chief Justice Taft remarks (p. 455):

> "* * * Nor is the constitutional basis for acquisition any less effective because the springs thus kept safely available for the Federal purpose do in the abundance of their flow also supply water sufficient to furnish aid to the indigent and to those of the public of the United States who are able to pay for hotel accommodation on the little park surrounding the hospital and the springs. * * *"

In the case of New York ex rel. Rogers v. Graves, decided by this court January 4, 1937, reported in

Law Edition Advance Opinions, Volume 81, No. 5, page 202, the relator claimed his salary as general counsel for the Panama Railroad Company as exempt from the state income tax of New York. The court first determines that the creation, management and operation of the Panama Canal are proper governmental functions, and, secondly, that the railroad was built to aid in this purpose. The court goes on to remark (p. 206):

> "We attach no importance to the fact that the railroad company has utilized both its ships and railroad to carry private freight and passengers. The record shows that this is done to a limited extent compared with the government business; and that it is only incidental to the governmental operations. The primary purpose of the enterprise being legitimately governmental, its incidental use for private purposes affords no ground for objection. * * *
>
> "It is suggested that the dairy, hotels, and other enterprises, built and maintained by the company, are not governmental instrumentalities. Even if we accept that conclusion—which, in view of their use for the personnel of the railroad and canal, we are far from doing—it would not alter the fact that the railroad itself, in connection with the canal, is a Federal instrumentality."

Equally erroneous is the conclusion that the State of Washington did not intend to cede exclusive jurisdiction to the United States. This conclusion obviously cannot be based upon a construction of the statute of the State of Washington by which the Legislature cedes jurisdiction. Remington's Revised Statutes of Washington, § 8108. The words "and

the jurisdiction of this state is hereby ceded to the United States of America" obviously show an intention of the Legislature to cede. The conclusion of the court that a cession was not intended therefore can be based only upon the proposition that the power of the Legislature to cede jurisdiction is limited to projects within the constitutional power of Congress to authorize. We place side by side the purposes of the Boulder Canyon Dam as quoted at page 456 of the opinion of this court in Arizona v. California, supra, and the purposes of the Grand Coulee Dam taken from the Rivers and Harbors Bill of the 74th Congress, thus:

Boulder Canyon Dam	*Grand Coulee Dam*
River regulation	Controlling floods
Improvement of navigation	Improving navigation
Flood control	Regulating the flow of the streams of the United States
Irrigation	Storage and delivery of stored waters
Domestic use	Reclamation of public lands and Indian reservations
Satisfaction of present perfected rights	Other beneficial uses
For power	For the generation of electric energy as a means of financially aiding and assisting such undertaking

Can it for one instant be doubted that the conclusion of this court concerning the Boulder Canyon Dam "the erection and maintenance of such a dam and reservoir are clearly within the powers conferred

upon Congress" applies in all its force to the Grand Coulee Dam project?

Appellees make the further contention that a part of the dam will rest upon the bed of the Columbia River, title to which is vested in the State of Washington. The answer to this contention has often been given by this court. It is, that whatever ownership to the bed of navigable streams may vest in the State such ownership is subordinate to the paramount right of the Federal government to assert its title to so much of the stream bed as is necessary to the improvement of navigation.

In Gilman v. Philadelphia, 3 Wall. 713, 714, this court said:

> "Commerce includes navigation. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress. * * *"

and in Gibson v. United States, 166 U. S. 269, 271:

> "All navigable waters are under the control of the United States for the purpose of regulating and improving navigation, and although the title to the shore and submerged soil is in the various States and individual owners under them, it is always subject to the servitude in respect of navigation created in favor of the Federal Government by the Constitution."

In United States v. Chandler-Dunbar Co., 229 U. S. 53, a condemnation suit by the United States against the owners of the bed of a navigable stream who had acquired title thereto from the State of Michigan, the court remarks (p. 62):

> "It [the ownership of the stream bed] is subordinate to the public right of navigation, and however helpful in protecting the owner against the acts of third parties, is of no avail against the exercise of the great and absolute power of Congress over the improvement of navigable rivers. That power of use and control comes from the power to regulate commerce between the States and with foreign nations. It includes navigation and subjects every navigable river to the control of Congress. All means having some positive relation to the end in view which are not forbidden by some other provision of the Constitution, are admissible. If, in the judgment of Congress, the use of the bottom of the river is proper for the placing therein structures in aid of navigation, it is not thereby taking private property for a public use, for the owner's title was in its very nature subject to that use in the interest of public navigation."

Arizona v. California, 283 U. S. 423, is an action for an injunction enjoining the erection of the Boulder Dam in the Colorado River brought by the State of Arizona against the Secretary of the Interior of the United States and the States of California, etc. It appeared that a statute of Arizona required the approval of the State Engineer of the plan of dams erected by the United States government. The court held that the United States has power to construct a dam across a navigable river for the purpose of improving navigation and need not first obtain ap-

proval of its plans by the State in which the dam is to be located even though this be expressly required by a statute of such State. On page 451 the court says:

> "The United States may perform its functions without conforming to the police regulations of a State. (Citing cases.) If Congress has power to authorize the construction of the dam and reservoir, Wilbur [Secretary of the Interior] is under no obligation to submit the plans and specifications to the State Engineer for approval. And the Federal Government has the power to create this obstruction in the river for the purpose of improving navigation if the Colorado River is navigable. (Citing cases.)"

In Ashwander v. Tennessee Valley Authority, 297 U. S. 288, the power of the United States to dispose of electric energy generated at the Wilson Dam in the Tennessee River was challenged. This court first found that the erection of a dam in a navigable river was within the constitutional power of Congress. At page 330 the court says:

> "* * * The Government acquired full title to the dam site, with all riparian rights. The power of falling water was an inevitable incident of the construction of the dam. That water power came into the exclusive control of the Federal Government. The mechanical energy was convertible into electric energy, and the water power, the right to convert it into electric energy, and the electric energy thus produced, constitute property belonging to the United States. * * *"

ADDENDUM

While fully conceding (R. 76) that the Ryan contracts were performed wholly upon lands acquired by

the United States prior to the commencement of the work, in the Silas Mason case appellees remark, somewhat casually, that Section 36 (upon Exhibit C) is school land and that the title to it is in the State of Washington. Neither the dam itself, nor any of the structures appurtenant to it, nor any of the works of the contractors are upon this land or directly contiguous to it. Neither is the land part of the contractors' camp. In fact, it is across the river opposite to the contractors' camp. For these reasons the Supreme Court of the State of Washington does not even notice this contention of appellees in its opinion. A reference to Exhibit C, the map and the letter accompanying it, and pages 104, 105 and 107, of the transcript of the record (Silas Mason case) show that this land is known as the "Engineers' Camp" to distinguish it from the contractors' camp (Mason City). It has been reserved pursuant to Remington's Revised Statutes, §§ 7410, 7412, as the site of residences for the engineers of the United States Bureau of Reclamation. (R. 104, 105.) This reservation by the State for the benefit of the United States will, if it be material, "ripen into a grant from the State to the United States upon completion of the project." For the purposes of this case the question of title is irrelevant and immaterial because the land is neither used nor useful in connection with any work of the contractors in either of the present cases.

CONCLUSION

It is respectfully submitted that the land acquired by the United States government for the purpose of the Grand Coulee Dam project is both by express cession by the State and by purchase by the United States with the consent of the State removed from the jurisdiction of the State of Washington and is within the exclusive jurisdiction of the United States. It follows that the State of Washington is without power to levy any tax upon an occupation conducted exclusively upon such territory.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

DAVID H. RYAN, Appellant,
vs.
THE STATE OF WASHINGTON, et al., Appellees.
No. 8

REPLY BRIEF OF AMICUS CURIAE

E. P. DONNELLY,
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